

Interagency Task Force on Employee Misclassification

Thursday, September 4, 2008
Don H. Bottum University Center
Northern Michigan University
1401 Presque Isle Ave
Marquette, MI

MINUTES:

Task Force Attendees: Lt. Governor John D. Cherry Jr., Keith W. Cooley (Chair), Stephen Geskey, Jack Finn, Cheryl Cornellier, Chris Mitchell

Opening Remarks

Director Cooley welcomed everyone to the meeting and gave an overview of the agenda for the meeting, and introduced Lt. Governor John D. Cherry.

Lt. Governor Cherry gave opening remarks, saying the Task Force is a group that has been charged by the Governor to examine the issue of misclassification. It's a growing problem we find in the workplace where employers sometimes misclassify employees as contractors. One of the repercussions for employees is that they lose access to certain benefits that employers would be required to provide by law. For the state, the repercussions are issues like unemployment insurance and taxes when they don't pay those kinds of charges. The employer gains a competitive advantage over employers that play by the rules. This has caused the Governor to seek an opportunity to hear from the public on how we can work together as state agencies because there are different enforcement issues and how we can better enforce the laws. We are reporting back with recommendations on what kinds of changes we may have to make administratively or legislatively. That's why it good to see Senator Cropsey and Representative Lindberg here. We want to make sure undocumented workers don't make their way into the workplace.

Presentation on Employer Misclassification

A 10 minute Power Point presentation was shown highlighting Executive Order 2008-1 on Employee Misclassification, Duties of the Task Force Committees, Scheduling, Governor Granholm's Charge to the Task Force, Reasons Why Employee Misclassification is Harmful, Economic Reality Test and Contact Information.

Public Comments

■ Robert O'Neil – Carpenters Local 1510

There is also misclassification on jobs where people are asked to do jobs they don't normally do. If they are laborers and are asked to do carpenter work, they should be paid to do carpenter work. A contractor out of Texas built a Red Lobster in Marquette. Everyone working on that was a young kid out of high school and each one of them was 1099. Not one of them signed papers. After their job was done, they went in for unemployment and were told they didn't have it. That to me is a crime. These people should be prosecuted. There should be something in place to make sure this doesn't happen to kids. When they were told they were 1099, they asked what does that mean. They were told, "You were hired as a private contractor." If you have to have a license to build a home, you should have to have a license to build a mall or to build anything. You should have to show a license to show you are a legal contractor and make it easier for your organization to track these people. I talked to people who were 1099 in the past, and they were afraid to come forward. They think they are the ones who are going to be prosecuted. There should be some kind of educational process to help educate these kids so they know they are not the ones doing something wrong.

And now they got stuck for income tax but, how do they pay it when they get nothing? In a round about way, they do get penalized.

Steve Geskey – This is the first time I've heard age brought into the mix. Most of the testimony we have heard thus far has been focused on the adult working population. A child who is forced essentially by an employer to sign a 1099 form may even lack the legal capacity to do so. At 17 there are laws too. Once you cross 18, you are dealing with a little bit different area with the law. But that's an interesting point.

Mr. O'Neil – I'm glad I got that across. The thing is, the contractor did not have them sign the form saying they were 1099. They just worked for them and got their money and thought they had the unemployment coming just like anybody else and found out they didn't.

Dir. Cooley – We should probably make a change to our PowerPoint slide to review the term 1099. When I was a consultant and I was an independent contractor, I was given a check in payment, but I also got a 1099 form when it came time to pay income taxes because that essentially said that taxes were not taken out and these funds were subject to income tax, social security tax, etc., and for younger people especially, I agree we have to change this. I wonder if there could be some kind of amnesty, especially for the young people if they were willing to help us identify the contractors that do that.

Mr. O'Neal – I'm sure that would go a long way. They are afraid to come forward because they are facing prosecution themselves and you can't blame them. They don't know any better. If they were educated to the point where there is an amnesty clause in there or something and they understand they are not going to be prosecuted, they would be more willing to come forward and make statements.

Dir. Cooley – We'll take note of that.

Jack Finn – You brought up about young people under the age of 18 working construction. That's against the law bottom line. It's considered a hazardous occupation and no one under the age of 18, under the Youth Employment Standards Act, is supposed to work in construction. If you could give us more information, we would be glad to look at it and investigate it.

Dir. Cooley – Senator Cropsey was instrumental in making sure that the Upper Peninsula had a wage and hour investigator in the UP. Before, they didn't have one. If anyone has a problem, contact David Hancock.

■ **Tony Retaskie, Upper Peninsula Construction Company**

My son came home a few years ago from work and I asked him how his day went and he said, "What's a 1099 form?" It really got my attention. The contractor he was working for said, I'll pay you \$10.00 an hour or \$8.00 an hour. He said, I'll take the \$10.00. Later on, he said \$8.00 an hour was taking out taxes and other expenses. Of course young people fresh out of high school want the \$10.00 an hour, and aren't really concerned about the repercussions. Worker misclassification in the state of Michigan has been a problem for years. It creates an uneven playing field for the hard working honest contractor who can't bid against the unscrupulous companies that regularly misclassify workers. 1099 workers often become a burden on society. If an employee gets hurt on the job with no workers comp insurance, and that employee gets injured we all suffer. I want to applaud you for your efforts and thank you for holding your hearings here.

■ **Michael Thibault, Michigan Building & Construction Trades**

Lt. Gov. Cherry and members of the Task Force, thank you for taking the time to come to the UP. I'm not going to be redundant. I just want to make two points. It does not provide a level playing field for our good signatory contractors that work with building trades unions, who pay their business taxes, who pay their unemployment insurance and do all the things right that they are supposed to

be doing. The other point I would like to make is I think in the future, we will be faced with a growing problem of undocumented workers and using this misclassification. In my opinion, it is the only way an employer is able to bring on undocumented workers into an area. Obviously they wouldn't have social security cards and so on. So it gives them an opportunity to bring undocumented workers into an area. I think we just had a case in Marquette where some undocumented workers were removed from a new store that was being built. It's not just in major cities, it in this area. I think the problem is going to be growing.

■ **John Zelinski, Zelinski Brothers, Inc.**

Some of the others touched on it. I pay a lot in insurance premiums, and I know a lot of guys who don't. The money they save lets them pay their guys more. There is a huge incentive to do that in order to get them on 1099s. I have to figure out a way to combat it because they have a huge advantage in money saved.

Dir. Cooley – What happens when you go on a job like that and you say I don't want to be paid on 1099, I want to be an employee?

John Zelinski – I have never been hired by somebody competitive wise. The guy I'm talking about has been able to get around it. He's been around 10 or 12 years. He's saved tens of thousands of dollars over all the years he's be able to get around that.

Dir. Cooley – If you think of any way for us to talk to him, let us know.

Cheryl Cornellier – For Workers' Comp, we do take complaints but at a different number. If you know of contractors who are doing that, contact us at workers comp and we will start an investigation. A lot of times we use MIOSHA people to help us deal with the problem.

Joyce Surprenant – Any complaints or filings that come in on the number listed on the paper will also be forwarded to that department.

Wesley Daniels – When we were talking about the health care requirement, is there some way to take away that motivation to fudge those reports? Is there some way to alleviate those costs?

Steve Geskey – The misclassification of workers affects the workers because they lack legal protection that employees have and the other aspect concerns the competitive advantage that non compliant employers may gain by misclassifying employees.

Dir. Cooley – I don't think that's an easy one to answer because the only way would be to say none of the employers have a requirement to pay those taxes.

NOTE: It was mentioned before we have a person to contact in the UP. His number is 906 482-3602.

Jack Milbrath, Iron Workers #8 – I have a contractor that I'm having trouble with. He's been in Wisconsin and has all kinds of filings against him with the USDOL. But Wisconsin can't do anything about it because it's in Michigan.

Response – Michigan, along with four or five different states was the first signers of a federal document that allows us to share information between states, including the federal IRS. If Wisconsin is one of those signers, we can find that out. We have a research committee that is working to find out what other states are doing and how we can better coordinate our information.

Q – Is there any kind of liability or penalty to owners or general contractors that use a contractor on 1099 or other problems like that?

Steve Geskey – It depends on if the officer or director of the company can be liable. For Unemployment purposes, yes if you can show that there was a conspiracy or violation of the MES Act. We would have to follow the paper trail.

Jack Finn – Under the Prevailing wage act, we can go after the contractor if the sub contractor is not paying any prevailing wages.

- Meeting adjourned.